

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUSTAVO P.,

Claimant,

vs.

VALLEY MOUNTAIN REGIONAL
CENTER,

Service Agency.

OAH No. 2011031602

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Stockton, California, on May 31, 2011.

The Service Agency, Valley Mountain Regional Center (VMRC), was represented by Anthony Hill, Assistant Director of Case Management and Hearing Designee.

Claimant was present at the hearing, represented by his brother-in-law and accompanied by George Lewis, Community Program Specialist, Area VI Developmental Disabilities Board.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Is VMRC required to provide claimant with contracted transportation services (Storer Transportation) in place of public transportation (Dial-A-Ride)?

FACTUAL FINDINGS

1. Claimant is an unconserved sixty-five-year-old man eligible for VMRC services based on a diagnosis of mental retardation. He is verbal and ambulatory and is able to complete his personal care activities independently, with verbal prompting. Claimant lives at home with his brother-in-law and mother-in-law. His wife passed away in 2005. Claimant helps with household chores and is “very helpful and sociable.” He does “require someone nearby to avoid injury and harm in unfamiliar settings.”

2. As indicated in his current Individual Program Plan (IPP), dated January 12, 2011, claimant attends “San Joaquin County Mental Health Adult Day Program on a full-time basis; he is on the senior unit. His program objectives include: maintaining health and safety, increasing control over one’s own life, developing and maintaining relationships and participating in the community.” The day program is provided to meet claimant’s IPP “Objective #5: Provided with training and support, [claimant] will develop social, self advocacy, vocational and independent living skills.”

3. Claimant’s IPP also states that he “will be provided with door-to-door transportation to and from his day program to ensure his safety.” The IPP specifies:

[Claimant] currently receives contract transportation to and from his day program. He was certified for Dial-A-Ride services in February of 2009 and he received his registration card and ID at the end of June 2009. He uses Dial-A-Ride independently for medical appointments and to access the community. SLS assists him [sic] schedule transportation for medical appointments. He will begin accessing Dial-A-Ride services for day program effective 2/1/11.

4. Claimant has medical concerns including high blood pressure, hypertension, hypothyroidism, arthritis, anemia and a parasophageal hernia. He takes medication independently but is unable to monitor his medical and dental needs independently. Therefore, he receives ten hours per month of Supported Living Services (SLS), from Another Way Independent Living Services, to “facilitate communication with his health providers, with scheduling medical and dental appointments, accessing community resources, assistance with refilling prescriptions, and relaying information to his family.”

5. In addition, claimant receives thirty hours per month of In Home Support Services (IHSS) from San Joaquin County Department of Aging, to assist with his household maintenance and personal care needs.

6. On March 16, 2011, VMRC issued a Notice of Proposed Action (NOPA) to claimant, advising that the agency proposed to “deny more restrictive transportation service i.e. contract transportation.” The reason for the action was “require least restrictive service i.e. public transportation.”

7. On March 29, 2011, claimant filed a Fair Hearing Request appealing VMRC's decision denying provision of "transportation services for Storer." The request stated:

The new transportation causes [claimant] to either arrive to program too late or too early. The new transportation (Dial-A-Ride) leaves a gap in his services that concern his safety. New transportation picks up too early and drops him off at Activity Center when the facility still has not opened nor is anyone present. The center is located on the bad side of town which exposes [claimant] to danger and street crime.

Allow [claimant] to be transported by previous transportation, Storer, a company that shows compassion and concern about [claimant's] safety from pick up to drop off. Storer transportation may take longer, but he will arrive safely with other consumers, and be on time.

8. Erica Barajas is claimant's VMRC Service Coordinator. She testified that after claimant was certified to use Dial-A-Ride, in June 2009, he demonstrated his ability to use the service independently for medical appointments and to access the community. She explained that claimant's SLS worker is responsible for assisting him with scheduling his rides.

9. At claimant's IPP meeting on January 12, 2011, the team agreed to replace claimant's contracted transportation service to and from his day program, Storer Transportation, with Dial-A-Ride. This service was effective February 1, 2011.

10. On March 11, 2011, the Dial-A-Ride driver picked claimant up for the trip to his day program earlier than scheduled which resulted in his arrival to program prior to staff. The driver remained with claimant until program staff arrived. As a result of this incident, claimant's family requested that his day program transportation revert back to the contracted service provided by Storer Transportation.

11. Wilma Murray is the Community Services Manager responsible for overseeing transportation services for VMRC. She explained the agencies responsibility for obtaining transportation services for the consumer which meets his need and is cost-effective.

She testified that Dial-A-Ride allows for up to fifty percent of its passenger load to arrange for "standing ride" service. This service meets the need of consumers who have appointments on a weekly basis at a set time and alleviates the need to continually call in to reserve transportation times. On a "standing ride" there is a twenty minute window before and after the scheduled pick-up time that a driver may arrive to transport the consumer. If the driver arrives earlier than the twenty minute window, the policy is to ask the consumer if he or she would like to leave early and, if not, to wait for the window to begin.

12. Ms. Murray stated that claimant began using the Dial-A-Ride service on February 1, 2011 as provided by his IPP. On March 11, 2011, she was informed that claimant was picked up prior to the twenty minute window and was waiting at his day program with the driver when the program supervisor arrived.

She opined that Dial-A-Ride may meet claimant's needs in a cost-effective manner. She testified that claimant has demonstrated his ability to use the service independently. She also explained that the day program is approximately four miles from claimant's residence and the Dial-A-Ride cost is approximately \$6.00 per day. Storer Transportation's cost for the same service is \$29.00 per day.

Ms. Murray explained that no transportation services, contracted or public can guarantee an exact arrival time. She recommended that claimant's pick-up time be rescheduled and other safeguards be put in place to prevent any future occurrence of claimant's arrival to program prior to staff.

13. Julie Bristow is the Americans with Disabilities (ADA) Act Mobility Specialist for San Joaquin Regional Transit District, the Dial-A-Ride service provider. She explained the eligibility process to determine a consumer's appropriate service level based on a combination of functional ability and features of the service type. Claimant was utilizing the service on a "reservation" basis as necessary for individual medical appointments and events. He was then deemed eligible for the "standing ride" service to meet his scheduled day program transportation needs.

14. Ms. Bristow testified that she spoke with claimant's brother-in-law on March 15, 2011, regarding claimant's early day program arrival on March 11, 2011. In that conversation she explained that a consumer is not required to begin his trip until the twenty minute window opens. Claimant's brother-in-law felt that claimant was not capable of telling time to know when to leave and that the elderly mother and grandmother, living at the residence, would be unable to assist. She explained that regional transit drivers carry Blackberries where comments may be made and stored for a consumer. Ms. Bristow entered comments in claimant's profile "to inform the driver not to attempt pick-up before the early side of the window opened." She stated that there was no record of claimant attempting to use the service since that time.

15. Ms. Bristow explained and clarified the procedures for making and cancelling both "reservation" and "standing ride" services. She opined that claimant's scheduling concerns could be addressed and remedied if everyone would "sit down and discuss" the issues and come up with appropriate solutions. Among her suggestions were rescheduling claimants pick-up time and providing desired directions to the assigned driver.

16. Paul Billodeau is VMRC's Director of Case Management Services. In that capacity, he is part of the POS (Purchase of Service) Exceptions Committee which has the authority to grant exceptions in service related disputes. He stated that the committee received claimant's request to return to contracted transportation and after considering the request determined that there was not sufficient evidence to justify an exception at this time.

Mr. Billodeau testified regarding the agency's purchase of service policies, explaining the importance of exhausting generic resources and guaranteeing the cost-effective use of public funds. VMRC must utilize generic resources before POS dollars may be used to purchase a service. In this situation, claimant was found to be capable of using the Dial-A-Ride service which, as public transportation is a generic resource. He suggested that there was an "easy fix" to the scheduling concern by changing claimant's regularly scheduled pick-up time and noted that similar issues could also arise with contracted transportation. He opined that the planning team needed to meet to identify the issues and then discuss with the day program staff to accommodate claimant's needs. At this time, the committee determined that generic services have not been exhausted and there is not sufficient justification for an exemption allowing a return to contracted transportation services.

17. Lucy Vollstedt, claimant's SLS provider, testified to the procedure for requesting claimant's Dial-A-Ride services. Her supervisor is responsible for making the reservations for individual appointments, as well as reserving the "standing ride" pick-up times. Ms. Vollstedt accompanies claimant on his appointments.

18. Claimant's brother-in-law resides with claimant and is very caring and concerned with his well being. He testified that Dial-A-Ride is not meeting claimant's transportation needs. He opined that it is not a safe means of transportation because it is "leaving gaps." He explained his concerns, specifically the possibility that claimant could be dropped off and left alone if the driver arrived too early for pick-up.

19. VMRC and San Joaquin Regional Transit staff all indicated a willingness to convene an IPP team meeting to work through the issues and determine a solution to claimant's transportation concerns. Some suggestions for consideration were "adjusting scheduled pick-up times and establishing a system to monitor changes and watch for and handle any glitches."

LEGAL CONCLUSIONS

1. Regional centers are governed by the provisions of Welfare and Institutions Code section 4500 et seq. (Lanterman Act).¹ Section 4646, subdivision (a), provides:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the legislature to ensure

¹ All subsequent statutory references are to the Welfare and Institutions Code, unless otherwise specified.

that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

Section 4646.4, subdivisions (a)(1) and (2), provide:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.

Section 4648, subdivision (a)(8), specifies:

In order to achieve the stated objectives of the consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

- (a) Securing needed services and supports.
- (8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

Section 4644, subdivision (b), defines "generic agency" to mean:

Any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services.

2. The Lanterman Act mandates that a consumer's IPP be based on his or her individual needs. In providing the services and supports necessary to meet those needs, the regional center must look to the availability of generic resources and ensure the cost-effective use of public funds.

3. *Burden of Proof:* A party seeking to change a service in a consumer's IPP typically has the burden of demonstrating that the proposed change is correct. Therefore, Claimant bears the burden of establishing that he is entitled to receive contracted transportation services in place of the Dial-A-Ride service provided.² Claimant has not met that burden. At this time, the evidence presented did not support a finding that Dial-A-Ride was an inappropriate transportation service that does not meet claimant's needs.

The evidence was persuasive that the generic resource is appropriate to meet claimant's needs and modifications may be made to address his concerns. The parties have agreed to convene and jointly attend an IPP meeting to specifically address claimant's transportation concerns. Until an attempt has been made to remedy any issues, it cannot be concluded that claimant requires contracted transportation services and that his needs cannot be met through the use of Dial-A-Ride with appropriate scheduling, monitoring and safeguards in place.

ORDER

The appeal of claimant Gustavo P. is denied.

DATED: June 14, 2011

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)

² California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."